IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7124 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYBHARAT FABRIC MILLS LTD.

Versus

UNION OF INDIA THRO' SECRETARY

Appearance:

1. Special Civil Application No. 7124 of 2002
MR PARESH M DAVE for Petitioner No. 1-3
MR DN PATEL for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 26/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 Rule. Mr.D.N.Patel, learned Senior Central Govt.

Standing Counsel appears and waives service of Rule on behalf of the respondents. At the request of the learned Advocates for the parties, the petition is taken up for final hearing today.

2 The petitioner company is a manufacturer of man-made fibre and fabrics. Some goods belonging to petitioner No.1 Company had been seized on 23.12.1992. The goods, which had been seized, had been subsequently released upon furnishing a bond and security deposit. After following the necessary procedure, ultimately by an order dated 28.6.2002, the security given by petitioner No.1 was ordered to be appropriated under the provisions of Rule 173Q(b) of Central Excise Rules,1944 read with Sec.34 of the Central Excise Act,1944 (hereinafter referred to as 'the Act'). The said order dated 28.6.2002 has been challenged by the petitioners in this petition.

3 Mr.Paresh M.Dave, learned Advocate appearing for the petitioners has submitted that the petitioners are aggrieved by the impugned order, as by virtue of the impugned order, the security given by the petitioner company has been appropriated under the provisions of Rule 173Q(b) read with Section 34 of the Central Excise Act, as the goods were not available for confiscation. Moreover penalty has been imposed upon one of the Directors of the petitioner Company and the Manager, the authorized signatories of the petitioner Company. Moreover, penalty has also been imposed upon the petitioner Company by virtue of the impugned order.

4 It has been submitted by the learned Advocate appearing for the petitioner that while passing the impugned order, the authority, viz. respondent No.3, had relied upon a judgment delivered by this Court in the case of Commissioner of Central Excise Vs. Ashok Fashion Ltd. 2002 (141) ELT 606 (GUJ.). It has been submitted that the view expressed by this Court in the case of Ashok Fashion Ltd.(supra) is contrary to the view expressed by the Delhi High Court in the case of Pioneer Silk Mills, 1995(8) ELT 507 (Del.). This Court, after hearing the case of Ashok Fashion Ltd.,(supra) had come to the conclusion that the provisions of the Act and the Rules made thereunder, including the provisions relating to confiscation and imposition of penalty contained therein, are applicable to the levy and collection of the additional duty of excise under Section 3(1) of the Additional Duties of Excise Act,1957 in the same manner as they apply in relation to the levy and collection of such goods under the Act and Rules framed thereunder.

5. Being aggrieved by the judgment delivered in case of Pioneer Silk Mills (supra), an appeal had been filed before the Hon'ble Supreme Court and the said appeal had been dismissed by the Hon'ble Supreme Court on 10.4.2002. Thus, the view expressed by the Delhi High Court in the case of Pioneer Silk Mills Pvt. Ltd.(supra) has been confirmed by the Hon'ble Supreme Court. In view of the said fact, the contrary view taken by this Court in the case of Commissioner of Central Excise Vs. Ashok Fashion Ltd. (supra) could not have been followed by respondent No.3 while passing the impugned order.

6 The above referred fact could not be disputed by the learned Counsel appearing for the Union of India.

7 In view of the above referred undisputed facts, in our opinion, it was not open to respondent No.3 to pass an order with regard to appropriation of the security as well as imposition of penalty upon the Director and the Manager of the petitioner Company. Similarly, penalty imposed upon the petitioner company under the provisions of the Additional Duties of Excise Goods for Special Importance cannot be confirmed by this Court.

8 In the circumstances, the impugned order, so far as it imposes penalty of Rs.15,000/- each on the Director, and Manager of the petitioner company and of Rs.22,000/- upon the petitioner company, is held to be bad in law and is quashed and set aside. Moreover, the order with regard to appropriation of security given by the petitioner company is also quashed and set aside.

9 The petition is therefore allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(A.R.Dave, J) (D.A.Mehta, J)
m.m.bhatt